IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13569 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHARDABEN CHANDULAL VYAS WD/O CHNADULAL VYAS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13569 of 2000

MR KL DAVE for Petitioner

MR PRADIP BHATE A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/03/2004

ORAL JUDGEMENT

The petitioner has approached this Court praying for direction on the respondents to pay to her the Family Pension of which she has been deprived of hitherto. She

is the widow of one Chandulal Vyas who served with the Revenue Department of the Government of Gujarat. The petitioner's husband joined the service of the respondents with effect from 1st August, 1952. He was working in the office of Superintendent of Land Records and he worked upto 31st May, 1963 as clerk. Since he could not clear the departmental examination, he was relieved from the service. However, later on, with effect from 31st October, 1968, he was again absorbed in the service and continued till 22nd September, 1970. He was relieved and thereafter again, he was taken back in service with effect from 9th October, 1970 and continued till he attained the age of superannuation on 7th April, 1971. He expired on 13th August, 1984.

1.1. It appears that during his lifetime, he did not make any claim for pension. However, upon his death, the petitioner entered into correspondence requesting the concerned authorities to grant her benefit of Family Pension. It further appears that even the Superintendent of Land Records had expressed his opinion, which was conveyed to the Accounts Officer, Directorate Pension of Provident Fund by communication dated 4th April, 1996, that she was entitled to receive Family Pension and the service that was rendered by the petitioner could be considered as continuous service of 11 years, which was adequate for making a person eligible for pension.

2. Apart from that, with regard to break in service and condoning such break for the purpose of counting adequate service for grant of pension, Special Civil Application No. 1707 of 1978 was preferred before this Court by some retired employees of the State Government, which came to be granted in their favour. However, the said benefit was made available to the petitioners of that petition alone, and it was not extended to the other similarly situated retired employees. In view thereof, another petition being Special Civil Application No. 3280 of 1984 was filed before this Court. The said petition was decided by this Court (Coram : S.K. Keshote, J.) on 3rd August, 1996. In the said judgment, the learned Judge, criticized the attitude of the Government and held that even those petitioners were entitled to the benefits, similar to that of the petitioners in Special Civil Application No. 1707 of 1978. In short, the learned Judge had made observations to the effect that both these judgments have been made applicable to all such employees who were similarly situated like the petitioners of Special Civil Application No. 3280 of 1984 and Special Civil Application No. 1707 of 1978.

2.1. In view of the aforesaid decisions, so far as the hurdle in the way of the petitioner with regard to break in service of her husband is concerned, it has been removed. However, she has been faced with one more difficulty. Merely that the Family Pension Scheme came to be introduced some time in the year 1972, was made applicable to the employees who were in service on/or after 1st January, 1972 and either retired or died in service on that day or thereafter. The husband of the petitioner has retired as stated above on 7th April, 1971. Therefore, she could not get coverage under the Family Pension Scheme, by virtue of the Resolution that has been passed by the department of Finance, Government of Gujarat dated 31st July, 1987. However, Mr. K.L. Parikh, learned advocate appearing for the petitioner has placed reliance on the judgment of this Court to show that benefit of Family Pension will also be made available to the petitioner by virtue of the ratio laid down by this Court in those judgments. The first decision is rendered by this Court (Coram : J.N. Bhatt, J.) in case of Mujiba Maganjibhai Waghela v. State of Gujarat reported in G.L.R. Vol XLI (4) 3195. In the said decision the learned Judge has held as under:-

> "7. The respondent authorities have, also contended that the decision of this Court relied on by the petitioners extending the benefit of Family Pension Scheme to those Government employees, who, retired on or before 1st June, 1971 and those who were alive on 1st June, 1971, who had opted out of the new Family Pension Scheme, 1972, would not be applicable and attracted to the group of petitions on hand. It is, in this context, the Government has declined to give benefit of Family Pension Scheme dated 19-5-1989 effective from 1-4-1989. The Government decided to give benefit of Family Pension Scheme, 1972 to all those eligible members, including dependents, who are, now, covered under orders of the Government will effect from 1-10-1977 as per the Government Resolution dated 11th May, 1990. Therefore, family pension, according to the respondents, has been given to dependents of the Government employees, who were the employees of the successor State prior to 1-5-1960 and rendered the service in Gujarat State with effect from 1-5-1960 and retired or died while in service thereafter. As per the Circular dated 3-8-1992, family pension is admissible with effect from

1-4-1992.

10. Government servants, as such, started getting pensionary benefits, when the revised pension rules came into effect in the year 1950, which came to be, later on, liberalised with the help of various Government Resolutions. According to the old Pension Rules, like that, prior to 1972, a Government servant, who, had completed 10 years of service were only entitled to family pension, and that too, say, upto a maximum period of 10 years after the death. Later on, Government deemed it expedient to further liberalise the scheme, as a result of which, 1972 Family Pension Scheme was brought into operation with effect from January 1, 1972.

11. Clause 2 of 1972 Government Resolution, eventually, show that "Family Pension" under the scheme will be admissible in case of death while in service, on or after 1st June, 1971, provided the Government servant has completed a minimum period of five years' continuous service on the date of death. Family Pension will also be admissible to a retired Government servant in receipt of compensation, invalid retirement or superannuation pension and who has retired on or after 1st June, 1971 and who has died on who may die on or after the said cutoff date. By virtue of Resolution dated July, 1987 the Government further relaxed and removed the limit of five years service which was there in the 1972 scheme. The plea of the respondents is that Clause 4 of the said Government Resolution prescribes parameters for entitlement of the benefit, whereby a Government servant should be in the service on January 1, 1986 or thereafter. In Clause 5 of 1972, Pension Scheme, it is provided as follows :-

> Every Government servant eligible to the benefits of the above scheme will be required to surrender a portion of gratuity, where admissible, equal to his two months 'pay' subject to maximum of Rs.3600=00. Where an Officer governed by this scheme retires, as a bachelor who has not adopted any child, no deduction from his gratuity will be made. In cases where the gratuity admissible is less

than two months' pay, the same will be resumed by Government against the family pension benefits admissible under this scheme."

2.2. However, the question with regard to whether widows of the employees who retired prior to cutoff date could be entitled to receive pension has been adequately dealt with by the learned Single Judge of this Court (Coram : R.C. Mankad, J.) in the case of Kamlaben Wd/O, Govindlal Harilal Sheth v. State of Gujarat reported in XXX (2) 1068.

"It appears that the State Government has followed the Central Government in framing the New Family Pension Scheme, 1971 and modifying it in 1977. The New Family Pension Scheme and its modification are broadly on the same pattern as the Family Pension Scheme framed by the Central Government and the modification of it made by it. The Supreme Court held to the effect that after the Family Pension Scheme became non-contributory, if the widows and dependants of the Government servants who had retired from service before the Family Pension Scheme was made non-contributory and who had not made the contribution, are denied the benefit of the Family Pension Scheme it would amount to denial of equality to them. It was held that such widows and dependants were similarly situated as the widows and dependants of Government servants who retired from service after Family Pension Scheme became non-contributory. The Supreme Court, therefore, held that any attempt denying the benefit of the Family Pension Scheme to the widows and dependants of Government servants who had not taken the advantage of 1964, liberalised Scheme by making or agreeing to make the necessary contribution would be a denial of equality to the persons similarly situated and hence violative of Article 14. The position of the widows and dependants of the State Government servants, who retired prior to June 1, 1971 and who retired between June 1, 1971 and October 1, 1977, but who had not made the contribution is identical. Such widows and dependants cannot be treated differently from the widows and dependants of the Government servants who retired from service on or after October 1, 1977. If such widows and dependants are denied the benefit of New Family Pension Scheme either on the ground

that the Government servant had retired before the New Family Pension Scheme came into force or on the ground that the Government Servant had failed to make the contribution when the scheme was contributory, would be denial of equality to the persons similarly situated and hence violative of Article 14. The ratio of the decisions of the Supreme Court in D.S. Nakara's case (AIR 1983, SC 130) and Poonamal's case (AIR 1985 SC 1196) applies with equal force to the case of the petitioners and other similarly situated persons. for the same reasons which are recorded in the decisions of the Supreme court, it must be held that the words "who were in service on 1st June, 1971 or are recruited thereafter" occurring in paragraph (1), the words "on or after 1st June, 1971" and "and who has retired on or after 1st June, 1971 and who has died or who may die on or after that date" in paragraph (2) and clause (a) of paragraph 12 of the Resolution dated January 1, 1972 and the words "i.e. will be applicable to those who have retired on 1st October, 1977 and thereafter" in paragraph 3 of the Resolution dated October 17, 1977 introduce an arbitrary eligibility criteria for being eligible for the New Family Pension Scheme and are violative of Article 14 of the Constitution.

Inspite of the clear pronouncements of the Supreme Court, a very curious stand has been taken up on behalf of the State Government. It is urged that the ratio of the decision of the Supreme Court in D.S. Nakara's case (AIR 1983 SC 130) does not extent to the case of widows in the matter of Family Pension.

It is difficult to comprehend as to how such a stand can be taken up by the State Government after the judgment of the Supreme Court in Poonamal's case (AIR 1985 SC 1196). The position of the widows and dependants of the Government servants, who retired on or after October 1, 1977, is no way different from that of the widows and dependants of Government servants who retired or died prior to June 1, 1971 or the widows and dependants of Government servants who retired between June 1, 1971 and October 1, 1977 and who had not made the contribution. It is these widows and dependants who are not given equal treatment. There is no question of giving

unequal treatment to Government servants who had retired prior to the specified date and those who had retired thereafter. The whole approach and stand of the State Government are misconceived.

Additional financial burden can hardly justify unequal or discriminatory treatment violative of Article 14 of the Constitution to such widows and dependants. The State Government cannot take up a stand, which would violate salutary constitutional provision."

2.3. Even the benefit of Family Pension Scheme should also be made available to the petitioner, but that has not been done.

3. In view of the aforesaid, this petition is required to be granted. The respondents are directed to pay to the petitioner the Family Pension under the Family Pension Scheme from the date of the death of her husband i.e. 13th August, 1984 and to make regular payment on that count. The respondents should calculate the arrears on this count and make payment of the same to the petitioner on or before 31st May, 2004.

Mr.Parikh has submitted that considering the delayed payment, the Government is liable to pay interest at the rate of 12% thereof, and in respect of the same he has also placed reliance on the decision of the Apex Court rendered in the case of Uma Agrawal v. State of U.P. reported in A.I.R. 1999 S.C. 1212. However, in that case the concerned Government servant was suffering from cancer and for that reason she had suffered with great hardship and in such event, the Apex Court had thought it fit to grant interest. That is not the case here. The submission of Mr. Parikh is not accepted.

This petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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